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Attorneys for Defendants Merrill  
Lynch & Co., Inc. and Merrill Lynch,  
Pierce, Fenner & Smith Incorporated

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IN RE MERRILL LYNCH AUCTION RATE : Master File No.:  
SECURITIES LITIGATION : No. 09-md-2030 (LAP)  
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THIS DOCUMENT RELATES TO : **ECF Case**  
NO. 1:08-CV-3037 (LAP) : **Electronically Filed**  
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**DEFENDANTS' NOTICE OF MOTION TO DISMISS LEAD PLAINTIFFS'  
"FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT"**

PLEASE TAKE NOTICE that upon: (i) the annexed "First Amended Consolidated Class Action Complaint" dated May 22, 2009; (ii) the accompanying Declaration of Jay B. Kasner dated June 26, 2009, and the exhibits attached thereto; (iii) the accompanying Memorandum of Law in Support of Defendants' Motion to Dismiss Lead Plaintiffs' "First Amended Consolidated Class Action Complaint"; and (iv) all prior papers and proceedings herein, Defendants will move this Court pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b) and the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 78u-4, before the

Honorable Loretta A. Preska, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York 10007, at a time to be determined by the Court, for an Order dismissing the "First" Amended Consolidated Class Action Complaint with prejudice and for such other and further relief as this Court may deem just and proper.

As agreed to by the parties, Lead Plaintiffs shall file their opposition papers on or before August 28, 2009 and their memorandum of law shall not exceed 50 pages. Merrill Lynch shall file its reply papers in further support of the motion on or before September 25, 2009 and their reply memorandum of law shall not exceed 30 pages.

Dated: New York, New York  
July 24, 2009

/s/ Jay B. Kasner

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